



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[Docket No. USCG–2021–0348]

Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Technical amendment.

SUMMARY: On January 21, 2022, the Coast Guard prematurely amended the definition of “major marine casualty” for title 46 of the Code of Federal Regulations as part of a technical amendment. The Coast Guard is reverting that definition back to how it appeared prior to issuance of the technical amendment.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0348 in the search box and click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Courtney Mallon, Coast Guard; telephone 202-372-3758, email Courtney.Mallon@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

- II. Basis and Purpose, and Regulatory History
- III. Discussion of the Rule
- IV. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Abbreviations

CFR	Code of Federal Regulations
NPRM	Notice of proposed rulemaking
NTSB	National Transportation Safety Board
§	Section
U.S.C.	United States Code

II. Basis and Purpose, and Regulatory History

On January 21, 2022, the Coast Guard published a technical amendment¹ that revised the definition of “major marine casualty” in title 46 of the Code of Federal Regulations (CFR), paragraph 4.40–5(d)(3). That change altered the property damage threshold from \$500,000 to \$2,000,000. The stated basis for the change was to implement section 211 of the Save Our Seas Act of 2018 (Pub. L. 115–265, 132 Stat. 3742). However, the Coast Guard has determined that this matter needs further analysis. The correct legal authority for changing this regulation is title 49 of the United States Code (U.S.C.), section 1131. That statute requires a rule prescribed jointly by the National Transportation Safety Board (NTSB) and the Coast Guard. As a result, we need to revert to the previous value of \$500,000 for the time being.

¹ 87 FR 3217

The Coast Guard is issuing this technical amendment without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this technical amendment because publishing an NPRM would be unnecessary. Under 49 U.S.C. 1131, changes to the reporting value threshold for 46 CFR 4.40-5(d)(3) requires a rule prescribed jointly by the NTSB and the Coast Guard. The January 21, 2022, technical amendment was only issued by the Coast Guard, so the value listed before the technical amendment should be restored, and can later be adjusted in a joint rulemaking. For those same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this technical amendment effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This action restores the property damage threshold of 46 CFR 4.40–5(d)(3), to \$500,000.

IV. Regulatory Analyses

We developed this amendment after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget has not designated this technical amendment a significant regulatory action under section 3(f) of Executive Order 12866. A regulatory analysis follows.

This technical amendment returns the property damage threshold in the definition of a “major marine casualty” to \$500,000 from \$2,000,000. This property damage threshold is contained within 46 CFR Subpart 4.40 covering the joint regulations between the NTSB and the Coast Guard for the investigation of marine casualties. Specifically, this property damage threshold defines when the NTSB may investigate marine casualties. Among other marine casualties, the NTSB has the right to investigate any major marine casualties with total property damage above the threshold.²

The Coast Guard made an error in its previous technical amendment in January 2022, and the Coast Guard quickly realized its error. As a result, both the NTSB and Coast Guard are still operating as if the NTSB may investigate any major marine casualty resulting in property damage of \$500,000 or more. Because Coast Guard and NTSB operations have not changed since the publication of the previous technical amendment, there has been no change in the regulatory analysis baseline since the January 2022 technical amendment.

The technical amendment in this notice will not result in costs to any industry, or government entities. Because the Coast Guard and NTSB are continuing to implement the \$500,000 property damage threshold for a major marine casualty, returning the

² 46 CFR 4.40-15(a) reads, “The Board may conduct an investigation under the Act of any major marine casualty or any casualty involving public and non-public vessels.”

regulation back to \$500,000 will result in no change in policy or practices across the public, NTSB, or Coast Guard. Without a change in practices there can be no costs from this technical amendment.

This technical amendment will result in unquantified benefits stemming from timely correction of the technical amendment that was made in error in January 2022. If an operator/owner or other pertinent marine entity suffered a marine casualty with between \$500,000 and \$2,000,000 in property damage, the NTSB would investigate it using the current Coast Guard/NTSB policy. This investigation would not be permitted by the current regulations. The individual could be averse to the investigation and argue that the Coast Guard/NTSB policy is not consistent with the current regulations.

However, because the Coast Guard issued the previous technical amendment under an incorrect legal authority, the previous change is invalid. Accordingly, the actual text of the CFR is not correct and can cause confusion and disagreement between the public, the Coast Guard, and the NTSB. By reverting the property damage threshold of a major marine casualty to \$500,000, the Coast Guard would eliminate a source of confusion from this section of regulation.

B. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this technical amendment so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this technical amendment or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

C. Collection of Information

This technical amendment calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

D. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this technical amendment under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

E. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this technical amendment will not result in such expenditure, we do discuss the effects of this amendment elsewhere in this preamble.

F. Taking of Private Property

This technical amendment will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

G. Civil Justice Reform

This technical amendment meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

H. Indian Tribal Governments

This technical amendment does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

I. Energy Effects

We have analyzed this technical amendment under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. Environment

We have analyzed this technical amendment under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

This technical amendment is categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of Department of Homeland Security Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and (d) those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations which are editorial or procedural. This technical amendment involves non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations.

List of Subjects in 46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 4 as follows:

PART 4—Marine Casualties and Investigations

1. The authority citation for part 4 is revised to read as follows:

Authority: 14 U.S.C. 102; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303A, 2306, 6101, 6301, 6305, 70034; 50 U.S.C. 198; DHS Delegation 00170.1, Revision No. 01.2. Subpart 4.40 issued under 49 U.S.C. 1131(a)(1)(E).

§ 4.40-5 [Amended]

2. In § 4.40-5 amend paragraph (d)(3) by removing the text “\$2,000,000” and

adding, in its place, the text “\$500,000”.

Date: June 6, 2022.

Michael Cunningham,
Chief, Office of Regulations and Administrative Law,
U.S. Coast Guard.

[FR Doc. 2022-12473 Filed: 6/13/2022 8:45 am; Publication Date: 6/14/2022]